THE HISTORY AND CURRENT STATUS OF MONTANA LAWS RELATED TO CHILD PROTECTIVE SERVICES

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A Report to the Joint Oversight Committee on Children and Families

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Overview and Scope of Report

As part of its 1993-94 study plan, the Joint Oversight Committee on Children and Families requested a study of the history and current status of Montana laws relating to child protective services. This report will examine:

(1) the historical development of protective services in Montana;

(2) the legal framework defining the Montana court system's role in child protective services, particularly the removal and out-of-home placement of children considered to be at risk of abuse and neglect, addressing specifically whether all persons involved in those protective actions are provided with adequate standards of due process and confidentiality; and

(3) whether present protective services laws correlate with the goals of the 1993 Montana Family Policy Act and the mission statement of the Department of Family Services--to preserve the family and to build on family and community strengths in the process of child protection.

Historical Development of State Protective Services Policy

Montana's concern for and care of the disadvantaged actually predates statehood. In fact, The Enabling Act of 1889[1], which set out conditions for

Montana's entry into the Union, allocated 50,000 acres of land for a "state reform school" and 50,000 acres of land for a "deaf and dumb asylum". Thus, for many years, the policy and focus of state protective services were from a reactionary, correctional perspective, dealing with situations only when they developed into crises requiring the institutionalization of a "problem" child or adult. Establishment of the state prison at Deer Lodge, the state school for the deaf and blind at Great Falls, the Pine Hills School in Miles City, the Mountain View School in Helena, the state hospitals at Warm Springs and Galen, the Center for the Aged at Lewistown, the state orphans' home in Twin Bridges, and the school and hospital for the developmentally disabled at Boulder were the state's primary response to dealing with these crisis situations.

By 1974, the number of persons committed to state institutions had risen to such a level, and proper funding and staffing were of such concern, that the Subcommittee on Finance and Claims conducted an interim study to investigate the problems of the institutions and community alternatives to institutionalization[2], with particular attention given to programs for the mentally ill, the mentally retarded, and juveniles. Although the Subcommittee drafted no actual legislation, at the crux of its findings was a recommendation that protective services for these groups be shifted away from institutions to community-based services. The 1975 Legislature responded by enacting legislation strengthening community alternatives for the developmentally disabled, the mentally ill, juveniles, and the aged. This represented a major governmental policy shift, requiring that problems of these groups be addressed first on the local level, and handled there whenever possible, as an alternative to institutionalization. This policy was implemented and subsequently expanded in numerous areas with regard to children and the elderly. The present legal framework surrounding the process for provision of child protective services will be examined in Part 1 of this report, particularly with regard to constitutional due process and confidentiality provisions.

More recently, the 1993 Legislature passed the Montana Family Policy Act[3], establishing the state's policy to support and preserve the family as "the

single most powerful influence for ensuring the healthy social development and mental and physical well-being of Montana's children". The Act ensures that future legislation will support families "by providing family support services to ensure that reasonable efforts are made to safely maintain children in their own homes or to provide temporary or permanent care for children who are removed from their families", including "family-based services to avoid removal from the home whenever possible and . . . out-of-home care, reunification services, adoption services, and long-term substitute care", and "by providing specialized services to strengthen and preserve families experiencing problems before they become acute and . . . early intervention and family support services, such as respite care, health and mental health services, and home-based rehabilitation services". The Act represents yet another major state policy shift by narrowing the focus of protective services even more, from broad-based community services to direct family services that will provide immediate and intimate family help before problems escalate to a community or institutional problem. Because the Act is so new, many of the procedures necessary to implement this innovative policy have yet to be developed. An examination of whether existing programs and procedures will realistically meet the criteria of the Act is discussed in Part 2 of this report.

Part 1

The Legal Framework Applicable to the Provision of Protective Services -- Due Process and Confidentiality Considerations

Introduction

Governmental intervention in the lives of citizens, even when conducted under the premise of protecting an individual's rights, health, and happiness, necessarily implicates the interplay of three separate but interrelated bodies of law: statutory law, in which the Legislature establishes policies and procedures

that will protect the people; administrative law, in which an executive agency is granted the authority to develop rules and operating procedures that implement the legislative policies; and case law, in which courts at various levels interpret the actions of both the Legislature and the agency to determine whether those actions are violative of state or federal constitutional or other legal protections. This part will examine the statutory, administrative, and case law that applies to child protective services. Due process and confidentiality provisions underlying those services will also be considered.

A. Child Protective Services -- Statutory Law

The Legislature has established orderly procedures that attempt to ensure due process for all persons involved in protective services for children, and has, since 1987, designated the Department of Family Services (DFS) as the lead agency to implement those procedures, in cooperation with all appropriate public and private agencies (41-3-107, MCA). The Youth Court, as part of the District Court system, has concurrent jurisdiction in abuse, neglect, and dependency proceedings (41-3-103, MCA). With regard to children, a state policy has been adopted "to provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for their care and protection" (41-3-101, MCA).

A decision regarding the provision of protective services may be made only after a report is received by DFS, which then notifies the County Attorney of the county where the child lives (41-3-201, MCA) and an investigation is conducted by a social worker, the County Attorney, or a peace officer (41-3-202, MCA). However, in cases when there is reason to believe that a child is in immediate or apparent danger of harm, a DFS social worker, peace officer, or County Attorney may immediately remove the youth, to be placed in a protective facility. In these instances, a petition must be filed within 48 hours of emergency placement unless the parent makes acceptable arrangements for

care of the child (41-3-301, MCA).

Upon receipt of a petition alleging abuse, neglect, or dependency, the court must set a date for hearing and the case is given precedence on the court calendar (41-3-401(2), MCA). To ensure proper representation for the child throughout the proceedings, a guardian ad litem is appointed for the child by the court (41-3-303, MCA). The parent, guardian, or legal custodian must be notified in person at least 5 days prior to the hearing on the petition, and in the event that personal service cannot be made, the court must appoint an attorney to represent the unavailable party (41-3-401(4), (5), MCA). Special notice and guardianship provisions apply if the parent is a minor (41-3-401(6), MCA), and if any party is indigent, the court may appoint counsel (41-3-401(12), MCA). The petition may ask for temporary legal custody, termination of the parent-child legal relationship, temporary investigative authority and protective services, or a combination of these forms of relief (41-3-401(10), MCA).

If temporary investigative authority and protective services are sought, facts establishing probable cause, supported by affidavit, must accompany the petition seeking those services (41-3-402, MCA). Once the court receives a petition for temporary investigative authority and protective services, along with the accompanying documents, it may issue an order granting immediate protection of the youth, and the order, petition, and supporting documents must be served on the persons named in the order. The order requires the person served to comply with the order immediately or to appear before the court within 20 days to show cause why the order has not been complied with. The burden of showing probable cause for issuance of the order lies with the party who filed the petition. Normal rules of civil procedure apply; however, the 1993 Legislature provided that hearsay statements made by the youth are admissible (41-3-403(1)(c), MCA). Upon failure to comply or show cause, the person named in the order may be held in contempt (41-3-403(1), MCA). The court may: (1) grant the DFS or a peace officer the right of entry; (2) order appropriate medical and psychological evaluations or counseling services; (3) order protective placement of the youth; (4) require that persons having

custody provide specific services; (5) inquire into the financial ability of the legal custodians to contribute to the costs of care for the youth and require a contribution to those costs; or (6) provide another temporary disposition that may be in the best interests of the youth (41-3-403(2), MCA).

At the adjudicatory hearing on the petition alleging abuse, neglect, or dependency, the court must determine whether the youth is in need of care and why. The court must hear evidence regarding the youth's residence; the whereabouts of the parents, guardian, or nearest adult relative; and any other relevant matters. The only privilege that applies to this proceeding is the attorney-client privilege. If the court finds that the youth is not abused, neglected, or dependent, the petition must be dismissed and any order for temporary investigative authority and protective services must be vacated. However, if abuse, neglect, or dependency is found, the court must set a dispositional hearing to be conducted within 30 days and may also grant temporary dispositional relief (41-3-404, MCA).

At the dispositional hearing, the court may: (1) permit the child to remain with the parent or guardian, subject to appropriate conditions; (2) grant the youth limited emancipation if the youth is 16 years of age or older; (3) transfer legal custody to the DFS, a child-placing agency, or a relative or other qualified individual; or (4) order further evaluations or treatment as necessary. If transfer to DFS occurs and the parent or guardian is financially able to contribute to the provision of services, the court must order a payment plan that may include income withholding, so that DFS is the payor of last resort (41-3-406, MCA).

The court may terminate parental rights or order other permanent legal custody when legal custody has been transferred to DFS and: (1) the child has been in an out-of-home placement for a cumulative total of 1 year or more and the parent has wilfully neglected to remedy the circumstances that necessitated out-of-home placement; or (2) the child has been in an out-of-home placement for a cumulative total period of 2 years or longer pursuant to court order, the

parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement, and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future (41-3-410, MCA).

Adjudication of child protective services as a civil cause is not a bar to criminal prosecution (41-3-401(3), MCA).

The statutory procedure for the termination of parental rights applies only after there has been a court determination that a child is abused, neglected, or dependent and that continuation of the parent-child relationship is not in the child's best interests (41-3-602, MCA). The County Attorney, Attorney General, or an attorney hired by the county welfare department or office of human services must file a petition alleging the factual grounds for termination. Termination is considered at the dispositional hearing, which follows or is held with the adjudicatory hearing required above, and must be considered within 180 days of the filing of the petition (41-3-607(1), MCA). After the petition is filed, a parent is advised of the right to counsel. If the parent is indigent, counsel may be provided (41-3-607(2), MCA), and a guardian ad litem is appointed to represent the interests of the child (41-3-607(3), MCA). The right to a jury trial in these proceedings has been specifically precluded by law (41-3-607(4), MCA). Personal notice to the parent is required (41-3-608, MCA), and specific criteria for termination have been established by law (41-3-609, MCA). A review hearing is required within 180 days of termination to determine whether the child has been permanently placed (41-3-610, MCA). Termination divests the child and parent of all legal rights, powers, immunities, duties, and obligations with respect to each other, except the right of the child to inherit from the parent. Following termination, the former parent is neither entitled to any notice of proceedings for the adoption of the child nor has any right to object to the adoption or to participate in any other placement proceedings (41-3-611, MCA).

As with any court order or decree, court decisions made pursuant to the

process for providing child protective services and the termination of parental rights are subject to appeal and receive precedence on the Supreme Court calendar (41-3-409, 41-3-612, MCA).

When child protective services are considered for a Montana Indian child who resides on a reservation or is a ward of the tribal court, the provisions of the federal Indian Child Welfare Act of 1978, 25 U.S.C. 1901, et seq., confer exclusive jurisdiction to tribal courts. For purposes of maintaining a focus on state procedures, the provisions of that Act will not be considered as part of this report, except under part D.

B. Child Protective Services -- Administrative Law

The Department of Family Services has been given statutory authority to adopt rules to govern the procedures used by DFS personnel in preparing and processing reports and in making investigations involving the provision of child protective services, including rules to govern the disclosure of case records containing reports of child abuse and neglect (41-3-208, MCA). Those rules are contained in Title 11, chapter 5, subchapters 5 and 6, Administrative Rules of Montana. DFS has also adopted a policy manual[4] for the provision of children's services. The manual is subject to ongoing revision to reflect statutory changes enacted by the Legislature. DFS recognizes that its "authority to intervene in people's lives is wholly statutory" and thus DFS "must strictly adhere to the specific requirements of the statutes in providing protective services to children in need of such care" (DFS Policy Manual: Child Protective Services, sec. 201-1). This 255-page manual outlines in detail each step of protective services that is required to allow DFS to fulfill its legal responsibilities and obtain the sanction of its activities by the courts. The manual covers the topics of Child and Family Services, Substitute (Foster) Care for Children, Supplemental Care (Child Day Care), and Adoptions. The statutory authority for each DFS action is cited throughout the manual. The flow chart at Appendix 1 of this report outlines the

instances when DFS action may intervene following a referral of child abuse or neglect. A closer look at DFS policy regarding particular steps in the child removal process, as it relates to due process and confidentiality, will be conducted in parts D. and E.

C. Child Protective Services -- Case Law

The sanctity of the family is a long-established legally recognized principle, not only in Montana courts but in federal courts as well. Generally, there must be a compelling state interest to justify state intervention with family sanctity, because the right of an individual to raise children according to that individual's personal belief is fundamental and protected by state and federal Constitutions. Meyer v. Nebr., 262 US 390 (1923); In re J.L.B., 182 M 100, 594 P2d 1127 (1979). Similarly, termination of a natural parent's right to care and custody of a child is considered a fundamental liberty interest in Montana and must be protected by fundamentally fair procedures. In re R.B., 217 M 99, 703 P2d 846 (1985). Application of those procedures necessarily includes clear definitions of conduct that constitute abuse, neglect, and dependency, so that all parties involved are aware of the kinds of conduct that justify state intervention. Montana's definition section, 41-3-102, MCA, has been held to be not unconstitutionally vague, ambiguous, or uncertain. In re Burgdorf, 170 M 116, 551 P2d 656 (1976). Therefore, offered evidence of such conduct is considered in relation to the declared state policy to promote normal childhood development and to provide for the protection of children whose health and welfare are or may be adversely affected by the conduct of those responsible for their care. In re J.L.F. & H.A.F., 192 M 63, 626 P2d 253 (1981); In re C.A.R. & P.J.R., 214 M 174, 693 P2d 1214 (1984).

Time is considered to be essential in the provision of emergency protective care because of the imminent or apparent danger of harm to the youth. The DFS clearly has authority under 41-3-301 and 41-3-302, MCA, to

remove a child that is in danger. Little Montana case law has developed involving the legality of the actual process for removing a child from the home, other than holding DFS liable for strict adherence to the statutory requirements. In re G., 174 M 321, 570 P2d 1110 (1977). However, other states have examined the validity and application of similar statutes allowing an endangered child to be temporarily removed from parental custody. Courts that have addressed these issues have upheld the validity of the statutes when they carefully set out the circumstances under which the child can be removed from the home and when the parent is afforded a prompt opportunity for a hearing after the taking. (See 38 A.L.R. 4th 756.) A further examination of the due process questions applicable to emergency protective care is contained in part D.

Abuse or neglect can take many forms, some violent, others more passive but just as injurious. The court cannot "hold the children hostage" while awaiting the good behavior of the parents, but must protect the children's rights as well as the rights of the parents. In re T.Y.K., 183 M 91, 598 P2d 593 (1979). Once a finding of abuse, neglect, or dependency has been made by the court, the best interests of the child are considered to determine appropriate disposition. In re L.F.G., 183 M 239, 598 P2d 1125 (1979). When proof shows that a child is abused or neglected, it is not possible to preserve family unity. It is when there is a failure of proof that the legislative policy to preserve the unity and welfare of the family must prevail. Family unity need not be preserved at the expense of a child's best interests. In re Inquiry Into J.J.S., Youth in Need of Care, 176 M 202, 577 P2d 378 (1978). Furthermore, when only one child in a family has been proven to be abused or neglected, the court has the ability to make a determination of neglect and abuse as to all children in the family based on the policy that abuse of one child has a detrimental effect on the other children's development. In re T.Y.K., supra; In re B.T., B.T., M.T., & M.T., 223 M 287, 725 P2d 230 (1986); In re T.C. & R.C., 240 M 308, 784 P2d 392 (1989).

There are three prerequisites that must be shown by substantial credible

evidence before parental rights can be terminated: (1) the child must be adjudged a youth in need of care under the statutory definitions; (2) a court-approved treatment plan must be shown to have been unsuccessful; and (3) the conduct or condition rendering a parent unfit to provide adequate care must be unlikely to change within a reasonable time. In re S.B., 223 M 36, 724 P2d 168 (1986). The same standard of review applies to both termination of parental rights and custody determinations: the District Court's decision is afforded all reasonable presumptions as to the correctness of the determination, and a decision will not be disturbed on appeal unless there is a mistake of law or a finding of fact not supported by substantial evidence that would amount to a clear abuse of discretion. In re S.P., 241 M 190, 786 P2d 642 (1990). Consequently, the Montana Supreme Court has on numerous occasions affirmed the termination of parental rights in the presence of these factors.

D. Due Process Considerations

When one contemplates the enormous potential impact on a child or family when removal of the child from a family situation is necessitated by abuse, neglect, or dependency or the consequences of removing an elderly person from society and placing the person in the care of the state because that person can no longer provide self-care, it is obvious that these kinds of life decisions require the utmost consideration of the personal rights of all persons involved. It is appropriate that these decisions can be ultimately compelled only by a court of law after providing an opportunity for an examination of the evidence, the affected parties, and the best interests of the person involved and an opportunity for full and thorough adjudication.

Of primary importance is a consideration of each person's right not to be deprived of life, liberty, or property without due process of law. (See Amend. XIV, sec. 1, U.S. Const., and Art. II, sec. 17, Montana Const.) Particular to cases involving the protection of minors, Article II, section 15, of

the Montana Constitution provides that "The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons." This section gives the Legislature express authority to supersede the fundamental rights of minors when more specific laws are necessary to protect them. These fundamental constitutional rights will be considered in the light of legal processes that have been developed regarding the provision of protective services.

There are two aspects of due process: (1) procedural, in which a person is guaranteed fair legal procedures; and (2) substantive, in which a person's property is protected from governmental interference or unfair taking[5]. The provision of protective services may encompass both aspects of due process. Procedural due process requires that every person have the protection of a day in court and the benefit of general law, including notice and opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case involved. Mont. St. Univ. v. Ransier, 167 M 149, 536 P2d 187 (1975). Substantive due process prohibits the state from using its police power to take unreasonable, arbitrary, or capricious action against an individual. In re C.H., 210 M 184, 683 P2d 931 (1984). Generally, if a question of fact or liability is conclusively presumed against a person, that is not due process of law. However, the constitutional guarantee demands only that a law not be unreasonable, arbitrary, or capricious and that the means selected to implement the law have real and substantial relation to the object of the law. Mont. Milk Control Bd. v. Rehberg, 141 M 149, 376 P2d 508 (1962). Due process is not a yardstick, but rather a delicate process involving the exercise of judgment, requiring the balancing of hurts complained of and the good accomplished by procedures used. Mont. Power Co. v. Public Service Comm'n, 206 M 359, 671 P2d 604 (1983). A court decides what process is due by balancing the individual's interest in avoiding the detriment against the state's interests in infliction of that detriment. In re M.C. v. Dept. of Institutions, 211 M 105, 683 P2d 956 (1984).

The Montana Legislature has adopted a policy that places preservation of the family and the protection of children as a primary consideration, in accord with Article II, section 15, of the Montana Constitution, and having identified this as its objective, has attempted to implement legal procedures to correspond to that policy. The procedure has built into it numerous opportunities for the representation and protection of rights and interests of the persons involved.

As noted in part C. above, courts that have addressed these issues have upheld the validity of statutes that carefully set out the circumstances under which a child can be removed from the home and that afford the parent a prompt opportunity for a hearing after removal. A failure on either or both of these points has caused courts to declare the statutes unconstitutional. However, even a valid statute may be improperly applied, and courts have found it necessary to look to the facts of the individual cases to determine whether proper action was taken.

First, there must be a consideration of the circumstances under which a child can be removed from the family situation. By law, removal of a child from the home cannot be done arbitrarily or capriciously, but only when DFS is notified that a person knows or has reasonable cause to suspect that a child is abused, neglected, or "in immediate or apparent danger of harm" (41-3-201, 41-3-301, MCA). Any person may report knowledge or suspicion of child abuse or neglect, and certain professionals and officials are required to report. When required, failure to report subjects that person to possible penalty, and anyone investigating or reporting an incident, participating in resulting judicial proceedings, or furnishing hospital or medical records is immune from civil or criminal liability that might otherwise be incurred or imposed, unless the person acted in bad faith or with malicious purpose. There is a rebuttable presumption that the reporter acted in good faith and with no malicious purpose (41-3-203, MCA). There is not a conclusive presumption against the party being reported that any prohibited activity occurred. Further, a judge who bases a child custody order on statements in a welfare department report without requiring

the authors of the report to testify at hearing and be subject to cross-examination violates due process requirements. In re Moyer, 173 M 208, 567 P2d 47 (1977).

When a report is received, a social worker, County Attorney, or peace officer must conduct a thorough investigation to determine whether the child is threatened. The social worker is responsible for assessing the family and planning for the child. If from the investigation it appears that the child suffered abuse or neglect, DFS shall provide protective services to the child and may provide protective services to any other child under the same care (41-3-202, MCA). By definition, threatened harm means a "substantial risk of harm" (41-3-102(15), MCA). As noted in part C. above, the definitions applicable to conduct and parties involved, as set out in 41-3-102, MCA, have been held to be not unconstitutionally vague, ambiguous, or uncertain. In applying the definitions, DFS has enumerated examples of cases that might reasonably require emergency removal, to include cases in which: (1) a child has been physically abused and is in need of medical attention that the parents refuse to obtain; (2) retaliation to the child will occur; (3) a child appears to need protection but the parents are likely to take the child and flee protective services authority; or (4) a child has been physically or sexually assaulted and the safety of the child in the home cannot be guaranteed (DFS Policy Manual: Child Protective Services, sec. 201-7). DFS must advise the County Attorney of its investigation. The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to DFS. The DFS maintains a record system containing child abuse and neglect cases (41-3-202, MCA).

Thus, Montana has statutory and administrative provisions that carefully set out state actions applicable to removal situations. In these instances, the presumption is that the child's interests are paramount, but does a due process problem arise when a child is removed without prior notification to the parent? As noted above, the legality of the actual emergency protective procedures has not been adjudicated by the Montana Supreme Court; however, the question has been addressed in several other jurisdictions. A federal District Court, in

Newton v. Burgin, 363 F. Supp. 782 (WD N.C. 1973) (subsequently affirmed by the U.S. Supreme Court at 414 US 1139, 39 L. Ed. 2d 96, 94 S. Ct. 889), recognized that although due process requires that certain procedures be met before any significant property right is affected, there are certain exceptions in which the hearing can be held after the seizure when such a course of action was necessary to secure an important governmental or public interest and there was a special need for very prompt action. In the Newton case, a statute allowing emergency removal of a child from parental custody for up to 5 days, effectively depriving the parents of custody of their children without a prior hearing, was held to clearly protect the important governmental or public interest in guarding the welfare of neglected children. Obviously, the care and needs of such children may require very prompt action. Upholding the constitutionality of the statute, the court reasoned that although no doubt most parents would not want to be without the custody and companionship of their child for 5 days, this was a relatively small price to pay compared to the possible neglect or mistreatment that a helpless child might have to endure were it not for the immediate action allowed by the emergency protective services. Montana's 48-hour timeframe following emergency removal is even less intrusive. However, in the Montana case of In re Gore, 174 M 321, 570 P2d 1110 (1977), natural parents were found not to have been denied their due process right when children were removed without a petition for custody being filed within 48 hours of removal when: (1) the parents did not object to the late filing until several hearings and approximately 6 months later; (2) the parents were familiar with court proceedings and the workings of the Department as the result of a prior child custody hearing; and (3) the District Court was in the best position to weigh the parents' evidence as to any prejudicial effect of filing the petition 10 days late.

In In re Z., 40 App. Div. 2d 1034, 339 NYS2d 3 (1972), a statute allowing emergency removal pending disposition of child protective proceedings in order to avoid imminent risk to the child's life or health was held to be a valid embodiment of the doctrine that the prior hearing doctrine may be dispensed with in emergency situations, provided that an adequate notice and hearing

process is in place. As noted below, Montana has a detailed notice and hearing process in place.

A Connecticut court, in In re Juvenile Appeal, 189 Conn. 276, 455 A2d 1313 (1983), noted that in determining whether such intervention was permissible, it was necessary to take into account the competing interests involved, those being the parent's interest in family integrity, the state's interest in protecting minor children, and each child's interest in personal safety and in having a stable family environment. Due process requires that statutes affecting fundamental rights be narrowly drawn to express only the legitimate state interests at stake. Only when a child is at risk of harm (in Montana, the risk must be substantial) does the state's interest become a compelling one, justifying even temporary removal of the child from the home.

Notwithstanding the fundamental right of a parent to raise a child, in State ex rel. Miller v. Locke, 162 W.Va. 946, 253 SE2d 540 (1979), the court held that coexistent with this right is the inherent power of the state to intervene to protect the child. As noted above, the power of the state to enhance the protection of children, even if it means that other fundamental rights may be precluded, is granted in Article II, section 15, of the Montana Constitution. Emergency situations may demand that the state take immediate action without regard to the rights and sensibilities of the parents in order to protect the health, welfare, or life of the child, but any taking and holding of a child from the custody of the natural parents is an unwarranted and unjustified intrusion into the family relationship if it continues beyond the period necessary to serve the legitimate interests of the state. Stated another way in In re Willis, 157 W.Va. 225, 207 SE2d 129 (1973), although emergency circumstances may warrant an immediate removal without notice to the parents or an opportunity to be heard, this does not give the state agency to whom the child is committed the right to retain the child's custody beyond a reasonable length of time, rather short in duration, as is necessary to effectuate the overriding state interests. If the child's and family's rights are not adjudicated within a reasonable time, due process is offended. In the Willis case, the passage of 3

years, coupled with omissions of the state to accord due process to the natural parents, effectively voided the initial custody change and the child was ordered to be returned to the parents.

The case of State ex rel. Lemaster v. Oakley, 157 W.Va. 590, 203 SE2d 140 (1974), also speaks to potential constitutional violations when a child is removed indefinitely without according parents their due process rights, even though the initial removal is lawful. The court ruled that the emergency removal provision had been unconstitutionally applied when, despite several hearings held subsequent to the child's removal, the state improperly placed upon the parents the burden of proving that they were able to care for their child. After the passage of a reasonable length of time necessary to effectuate the state's interests in protecting the child through emergency services, the onus for continued retention of the child's custody falls on the state, not on the parents. In Montana, the burden falls on the party filing the petition to show facts establishing probable cause that a youth is or is in danger of being abused or neglected or that an order for immediate protection is necessary.

As stated in Anderson v. M., 317 NW2d 394 (N.Dak. 1982), once a child has been removed from the home, due process requires that some procedural safeguards be used to test the necessity of the removal, to inform the parents of the reasons why the child was removed, and to permit the parents to respond. Therefore, before an intrusion into the affairs of the family is allowed, the state should have reliable evidence that the child was in need of protective care (in Montana, the evidence must be based on a report and investigation), and even if summary removal is justified, due process still requires that a hearing be held as soon as possible after removal. See Roe v. Conn, 417 F. Supp. 769 (MD Ala. 1976).

As noted above, statutory and case law do not require notice prior to removal. However, state law (41-3-301(1), MCA) and department policy (DFS Policy Manual: Child Protective Services, sec. 201-7) require the social worker to make every effort to notify the parents in person or by phone as soon as the

child is removed. When a child is removed from the home in an emergency, a report to the court and the County Attorney is required as soon as possible and always within 48 hours, excluding weekends and holidays. The County Attorney must file a petition for temporary investigative authority or temporary custody within that same 48-hour time limit (41-3-301(3), MCA). If a petition is not filed, a voluntary parental agreement is not signed, or a court order is not obtained, the child must be returned to the home.

A second consideration of due process has to do with legal representation of the parties involved in a removal situation. As noted above, a court may appoint legal representation for the child, in the form of a guardian ad litem. Appointed counsel is not required in every case, provided that the court makes judicial decisions as to whether counsel is necessary to safeguard the child's rights and states the grounds for refusal to appoint counsel in the record to afford adequate judicial review. In re M.D.Y.R., 177 M 521, 582 P2d 758 (1978). As in any judicial proceeding, parents have a right to be represented by counsel, but because most family and child custody matters are in the form of a civil proceeding, there is no constitutional guaranty of counsel as there is in criminal proceedings. The Legislature has recognized the need for representation in delicate family matters by allowing the court the discretion to appoint counsel for parties who are shown to be indigent. Nevertheless, in In re M.D.Y.R., supra, failure to appoint counsel for the mother at a hearing concerning temporary custody did not deny due process when the Department outlined a program to aid the mother and to encourage her to help herself, she was granted liberal visitation rights, she was not necessarily opposed to the Department's proposal, and the proposal was in the best interests of the child.

A complete analysis of due process also requires a consideration of the sufficiency of statutory and administrative notice provisions. Once a petition is filed and judicial proceedings are begun, under 41-3-401(7), MCA, any person interested in any abuse, neglect, or dependency proceeding has the right to appear. As outlined in part A. above, notice and an opportunity to be heard are provided for a parent at numerous times throughout the process: (1) notice at

least 5 days prior to the date set for an adjudicatory hearing on the petition and the opportunity to appear at the hearing and present evidence and witnesses; (2) personal notice upon issuance of any order for temporary investigative authority and, within 20 days of issuance of the order, a show cause hearing to determine why the person served has not complied with the order; (3) notice of a dispositional hearing within 60 days of a court determination that a child is abused, neglected, or dependent and the opportunity to appear at the hearing; (4) notice within 180 days of the filing of a petition to terminate the parent-child relationship, including specific provisions relating to personal or published service of process; (5) if notice is not served personally, an affidavit filed at least 10 days prior to hearing stating what efforts have been made to locate the parent and stating the opportunity to appear at the hearing; and (6) the right to appeal administrative and lower court decisions.

In short, it would appear that Montana's statutes for providing emergency child protective services are probably constitutional because they do allow the state to intervene in an emergency situation to protect a child's best interests, which is a clearly stated legislative policy, and they do allow a process of notification and hearing for parents, in consideration of due process rights. However, the proceedings must be conducted within a reasonable time so as to impact the family as little as possible and maintain family integrity, another stated legislative policy. The expedited hearing process, as required by court calendar precedence, is in conformity with this principle. Further, in all future state actions, the emphasis should be on family support and preservation and, whenever possible, on "assisting vulnerable families before crises emerge" and on "providing family support services to ensure that reasonable efforts are made to safely maintain children in their own homes" in order "to avoid removal from the home whenever possible", as directed by the Montana Family Policy Act.

Notwithstanding the apparent legality of child protective statutes, there is another issue that also must be considered--an issue brought to the attention of the Committee at its initial meeting in October 1993 and further raised by

numerous communications with staff by parents and concerned individuals who have had personal, often extremely frustrating and troubling contact with the state when it attempts to intervene in a family situation, whether or not a child is actually removed from the family environment. The Committee has requested that this issue be addressed by report as well. At the other end of the spectrum is the fact that the steadily increasing number of reported child abuse cases represents only a portion of actual incidents of abuse, so in fact the state is addressing only part of the problem. In short, the state is in the position of being criticized for doing both too little and too much. Also, it must be noted that DFS is precluded from commenting on abuse cases in process because of privacy considerations and potential criminal investigations, but there are always at least two sides to every story. The remainder of this section will address concerns raised by the application of child protective services to real family situations, although not to individual cases.

There is no doubt that child mistreatment is a serious problem and that public awareness of and concern with child abuse has greatly expanded in recent years. In response, lawmakers have moved to enlarge the bureaucracy and programs felt necessary to address the problem. As outlined in part E., because of the national scope of the problem, the federal government also intervened in the process in 1974 by enacting the federal Child Abuse Prevention and Treatment Act, 42 U.S.C. 5101, et seq., offering federal grants to states that enacted mandatory child abuse reporting laws, and all 50 states responded by enacting such laws. (See 41-3-201-203, MCA.) The concept behind mandatory reporting was to eliminate child abuse by granting legal immunity to educators, health professionals, and anyone investigating or reporting any incident of child abuse or neglect and making those parties legally liable for failure to report. Not surprisingly, the implementation of mandatory reporting, coupled with legal immunity for the reporters, has resulted in a huge corresponding increase in the number of reports, considered by some "an epidemic of overreporting". According to a recent report in the Washington Post[6], about 39% of the more than 2.6 million reports nationally of child maltreatment each year are substantiated. We are thus left to ponder the

potentially devastating effects on the families suffering unwarranted investigations each year. Families subjected to the inevitable disruption of an unsubstantiated investigation can certainly make the case that the very system enacted to prevent child abuse has resulted in a form of abuse to the family itself.

To those families it may seem that the child welfare agency and caseworker have unlimited power, even though any power inherent in the system stems from the law itself. But the child protective system, being a creature of human contrivance, is necessarily flawed and imperfect. Despite the legality of the system, it is nevertheless subject to misapplication, even by well-meaning agencies and social workers. For instance, by definition "harm to a child's health or welfare" means the harm that occurs when a parent "causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so" (41-3-102(8), MCA). It is not difficult to imagine a scenario in which unemployed parents who have exhausted their welfare benefits are not able to provide what a social worker might consider to be adequate clothing, shelter, or health care. In the social worker's mind, the children of such a family could be in danger of harm, justifying removal, when in fact the unfavorable conditions arose not from dangerous parents, but from poverty. The situation would quickly be exacerbated by the parent's obvious inability to hire counsel to protect their family rights. The resultant investigation, court procedures, and separation, even if unwarranted, could easily break up a family. Another consideration is the time involved in the process. An investigation and court procedures can easily take weeks to months, considering the overburdened system. While frustrating and damaging enough to the adults involved, to a child whose concept of time is measured in moments, separation from parental nurturing and influence could traumatize that youth for life. Yet another consideration is the possibility that children removed to foster care may be more likely to be subject to abuse than if they were in the care of their own parents.

The flip side of the argument is that despite the government's best intentions to alleviate child abuse, too little is being done. The total number of reported abuse cases has increased yearly[7]. (See Appendix 2.) In Montana during 1991-92, there was a 29% increase in the number of reports, due primarily to increased public awareness and to the recent practice of lawyers advising clients to allege abuse during custody battles. Depending on the source, national estimates of substantiated reports range between 39% and 42%. This figure still represents only a portion of actual abuse cases because many go unreported. A 1991 study by the National Committee for Prevention of Child Abuse concluded that only 39% of the children who died of abuse or neglect between 1989 and 1991 were known to child welfare agencies before their deaths[8].

Abuse and neglect cases are further complicated by the presence of numerous problems that can contribute, in varying degrees, to the likelihood for engaging in abusive behavior[7]:

(1) Alcohol abuse is the most prominent reported problem among families for Montana caseloads. Increased substance abuse can lead to the practice of parents leaving their children with relatives for long periods of time.

(2) Economic stress adds another contributing factor in some cases. Increasing numbers of families in Montana and the nation are living in poverty or are faced with increased financial stress through unemployment or the recession. When families have insufficient resources to care for their children, the result is that children are often left unsupervised.

(3) Family or domestic violence has been identified as a major difficulty for some families, resulting in more dysfunctional families entering the system with more damaged children.

(4) Lack of knowledge of child care and development, lack of parenting skills, and inappropriate child management techniques also characterize some families in the system.

(4) Finally, the lack of community support for families has been mentioned as a major impediment in the lives of some families.

A complete and comprehensive program of family services should

consider the above-listed complications in the assessment of the adequacy of family services.

Despite the potential for failure in the system, the Legislature should not abdicate its policy of protecting children or from using emergency removal as a legal tool to provide that protection. For the sake of children for whom state intervention may be the only hope of survival, those procedures must be left intact. Nor should the state succumb to the statistics that show the problem is growing beyond present resources. As set out in Part 2, the Montana Family Policy Act of 1993 mandates that future legislative actions address family problems in a home atmosphere, protecting family integrity with as little disruption as possible. There are several things that can be done to implement that policy and help prevent abuses stemming from the child protective services system itself, in cases of both too many or too few services:

First, it may be possible to clarify and strengthen the guidelines on abuse and neglect charges so that social workers, law enforcement, and professionals are given stricter parameters of the kind of incidents to be reported. This could help reduce the incidence of frivolous or unsubstantiated reports and help ensure that limited state resources are applied toward family services rather than needless investigations.

Second, intensive and ongoing training should be provided for all DFS field staff to ensure the least amount of confusion in identifying bona fide abuse cases, including training in the areas of investigations, basic legal and court procedures, privacy and confidentiality concerns, and the complexities of family problems, plus continuing education as home-based services are implemented.

Third, additional funding and caseworkers will be necessary to address the continuous growth in reported incidents, in order to lighten the already onerous caseload of social workers, allowing more individualized attention to home care needs of families.

Fourth, prompt handling of intervention cases must be facilitated, not only to keep the family unit intact as much as possible, but also to protect the due process rights of all parties involved.

Fifth, procedural requirements could be examined to ensure that parents

are informed, at the time of removal, of the reasons why a child has been removed and to better inform them of what they must do to get the child back into the family setting or, if that is dangerous or unfeasible, what the next steps in the legal process will be. This could be accomplished by something as simple as giving the affected parent or guardian, at the time of removal, a written explanation that: (1) a report of possible abuse, dependency, or neglect has been received; (2) the social worker believes temporary removal of the child is warranted while an investigation is conducted; (3) if the report proves to be unsubstantiated, the child will be returned; (4) if the report is substantiated, the parent or guardian will be given a prompt hearing; (5) clearly sets out the timeframe for return of the child, hearing schedules, or other procedural matters; and (6) fully informs the parent or guardian of the parent or guardian's legal rights, the child's rights, and legal options for state actions.

Sixth, agencies need to collect and disseminate better information on available services.

Seventh, a continued effort to identify and implement the coordination and collaboration of services between the public and private sectors is necessary if limited resources are to be most effectively utilized.

The bottom line is funding and the provision of services. The Legislature must give home-based family services high priority in the scheme of DFS funding if the intent of the Montana Family Policy Act is to be realistically accomplished. At its present level of funding, the child protective services system is unable to cope with the increased demands placed on it by intensified economic stress and substance abuse and by greater public awareness of and willingness to report child maltreatment. In effect, agencies are being asked to serve more people through greater services with the same amount of resources. These constraints affect the entire system of services by limiting services to the very victims and families that the state strives to serve.

E. Confidentiality and Privacy Considerations

Child and family records contain some of the most sensitive and private information that the government can maintain about its citizens. Confidentiality rules recognize that such information is gathered for a specific purpose and that the information should not be used for other purposes unless the affected individual concurs. Rules on child and family confidentiality must be especially strict in order to protect individuals from social repercussions that could occur if the information is used for a purpose for which it was not intended. Additionally, private service professionals often have their own ethical standards and legal obligations, so confidentiality rules must protect those organizations from having to disclose professional confidences or from being placed in the role of law enforcement agencies. Thus, the efficient and effective provision of family-related services requires the interplay between numerous public and private entities, including federal, state, local, and private service and welfare providers, law enforcement agencies, courts, medical providers, and the public in general. Any information-sharing system between these entities must harmonize multiple approaches and requirements while ensuring that families and children are not subjected to unwarranted invasions of their privacy.

The Montana Constitution contains a specific section regarding a person's right of privacy (Art. II, sec. 10, Mont. Const.), which reads: "The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest." The Montana Supreme Court has ruled that a compelling state interest is clearly shown in child abuse cases, thus allowing invasion of the right of privacy in those cases. St. v. Hall, 183 M 511, 600 P2d 1180 (1979). In conjunction with this fundamental right of privacy, Article II, section 9, Mont. Const., also grants the public a right to know, stating: "No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure." Thus, a case-by-case balancing is required to weigh the personal right of privacy against the public's right to know.

Federal law also regulates the access to child welfare records through the federal Child Abuse Prevention and Treatment Act, making federal funding contingent on the state's providing by statute that all records concerning reports of child abuse and neglect are confidential and making unauthorized disclosure a criminal offense. However, the state is allowed to name specific persons and agencies to whom disclosure is proper, generally persons involved in investigations or service delivery. In an effort to balance all these interests, the Legislature has passed specific confidentiality provisions with regard to child services.

Section 41-3-205, MCA, provides a misdemeanor penalty for any person who permits or encourages the unauthorized dissemination of the contents of case records, but there are exceptions to strict confidentiality, in conformity with federal law, in order to address the various interests.

Section 41-3-205, MCA, further provides that records may be disclosed to: (1) a court, which may in turn allow public disclosure; (2) certain government agencies authorized to receive, inspect, or investigate reports of child abuse or neglect; (3) certain licensed youth care facilities or licensed child-placing agencies; (4) licensed health or mental health professionals; (5) a parent or guardian of the child who is the subject of a report in the records or another person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records; (6) a child named in the records who was allegedly abused or neglected or the child's guardian ad litem; (7) members of an interdisciplinary child protective team; (8) a department or agency investigating an applicant for a license to operate a youth care facility, day-care facility, or child-placing agency if the investigation is based on a substantiated report and the applicant is notified of the investigation; (9) an employee of the DFS if disclosure of the records is necessary for administration of programs designed to benefit the child; (10) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act of 1978; (11) a youth probation officer

who is working in an official capacity with the child who is the subject of a report in the records; (12) a county attorney or peace officer if disclosure is necessary for the investigation or prosecution of a case involving child abuse or neglect; (13) a foster care review committee or a local citizen review board; (14) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer; (15) a member of a county interdisciplinary child information team; or (16) members of a local interagency staffing group. A person authorized to receive the records must keep the information confidential and may not further disclose the information to anyone other than government agencies authorized to receive, inspect, or investigate reports of child abuse or neglect.

The Montana Supreme Court has held that the child abuse confidentiality statute, 41-3-205, MCA, as it applies to file review, does not violate a defendant's right to confront his accusers and that a defendant's right to a fair trial is also fully protected as long as the trial court has authority to review the file in camera and to release file information to the accused. St. v. Thiel, 236 M 63, 768 P2d 343 (1989). However, the Attorney General held, in 41 A.G. Op. 49 (1986), that absent a court order, the Department (of Social and Rehabilitation Services) may not disclose case records and reports to: (1) the natural parent or other person having legal custody of a child who is the subject of a dependency or neglect action or of a child who has been abused or neglected while in the care of foster parents; (2) health care professionals who are treating a child suspected of being abused or neglected; and (3) the noncustodial parent of a child who has been removed from the custodial parent following an incident of abuse or neglect. The rationale for the Attorney General's opinion, based on the plain language of the statute, was arrived at because such reports "often contain information about the most private aspects of personal and family life. The information may or may not be corroborated and can be very damaging to the family unit if released indiscriminately." Confidentiality also encourages the public to report incidents of child abuse. Case workers and those providing information rely on the confidential nature of case records. A further reason disclosure is limited is to alleviate the

potential stigma to the abused or neglected child" and because "indiscriminate disclosure may additionally lead to civil liability". As a further protection, the Supreme Court has ordered that in cases of child abuse, neglect, and dependency, all names of parties involved be removed to avoid publicity of the minor parties involved. In re Gore, supra.

One issue brought to the attention of the Committee at its October 1993 meeting was an alleged lack of communication between the state and parents who have had children removed from the home. Parties who testified consistently expressed frustration with finding out the status of cases in progress and the disposition of the children involved. Comments intimated that everyone involved needed to have the appropriate information in a timely manner, that there was no way for parents to find out what DFS was doing, that when parents did try to find out what was happening they were told the case was confidential, and that in some cases children had been removed for a period of years and nobody knew why. The need for confidentiality is clear, and mandatory reporting requirements have definitely provided a major tool for addressing child maltreatment. Further, a social worker involved in intimate family matters on a daily basis must maintain a certain level of detachment from the personal aspects and personalities of a case in order to keep an objective outlook and probably some semblance of sanity as well. Nevertheless, in circumstances as traumatic as removal of a child from the family, fundamental fairness and notification requirements dictate that the parties actually involved be told what is happening and be made aware of applicable procedures and options. Special care should also be taken to inform the child of what is happening in order to lessen, as much as possible, any negativity or trauma arising from the incident.

Part 2
Applicability of 1993 Montana Family Policy Act: A Look Toward the Future

As noted in the historical examination of state family policy earlier in this report, new winds are blowing in Montana in regard to the provision of protective services for children and families, as embodied in the language and purpose of the 1993 Montana Family Policy Act. This new trend appears to further narrow the focus of the state provision of those services from community-based services to specific family-based services. The Act establishes as a guiding principle that the state promote the establishment of a range of services to children and families, including the following components:

(1) supporting families toward healthy development by providing a community network that offers a range of family support services, activities, and programs designed to promote family well-being, with services that include prenatal care, parenting education, parent aides, and visiting nurses; early childhood screening and developmental services; child care; and family recreation;

(2) assisting vulnerable families before crises emerge by providing specialized services to strengthen and preserve families experiencing problems before they become acute and by providing early intervention and family support services, such as respite care, health and mental health services, and home-based rehabilitation services linked to the services listed in (1); and

(3) protecting and caring for children in crisis by providing intensive services to protect children who have suffered or who are at risk of suffering serious harm from child abuse and neglect, by providing care for children at risk of out-of-home placement for emotional disturbances or behavior problems, and by providing family support services to ensure that reasonable efforts are made to safely maintain children in their own homes or to provide temporary or permanent care for children who are removed from their families.

These services include family-based services to avoid removal from the home whenever possible and to provide out-of-home care, reunification services, adoption services, and long-term substitute care. The Act directs the state and its agents to "work toward a system of comprehensive and coordinated services to children and families through joint agency planning, joint financing, joint service delivery, common intake and assessment, and other

arrangements that promote more effective support for families" and to "encourage community planning and collaboration". The Act "encourages all sectors of society to participate in building the community capacity to meet the needs of children and families" and suggests that "[n]eeded services to children and families should be provided as close as possible to the home community".

The Montana Family Policy Act, although not binding in itself, is without doubt innovative and ambitious in several ways. State resources should now be directed toward coordinating all aspects of protective services, with the goal of early prevention and maintaining the integrity of the family as the foremost consideration. The reason for this new policy is obvious. Past experiences in dealing with family crises through institutionalization have not had the good of the family unit as the driving force and have proven economically unfeasible and, except in extreme cases, largely ineffective. The community-based services policy, although more well-intentioned and a better use of family services resources, has nevertheless been fragmented and uncoordinated and still deals with family crises after potentially harmful or unworkable family situations arise. The continued breakdown in the integrity of family life suggests a need to shore up community-based services as well.

Thus, the 1993 Legislature has directed that the state boldly adopt a new home-based approach to helping families in need. This new policy will require a corresponding new mindset if success is to be expected. Yet it is often easier to change whole systems and modes of operation than it is to change minds, and this new agenda undeniably drags along with it residual philosophies, funding mechanisms, and procedures necessitated by failed institutional and community-based policies.

For legislators, perhaps the greatest change of mind will be required in the area of funding. Rather than dealing exclusively with family problems after they reach the crisis level, the Legislature must now begin to seriously and adequately consider funding home-based, early intervention programs to address problems before they become community or institutional problems. This

provision of front-end services is often difficult to appreciate, let alone fund, because the measures are preventive rather than reactive. Results are seldom immediate. Institutional and community-based programs will still need to be funded as well. Nevertheless, pilot programs in several states have proved that the long-range benefits of a home-based approach will be forthcoming. If problems can be addressed in a home setting, the need for subsequent community and institutional remedies is reduced, with a corresponding reduction in need for funding those remedies. However, the real value in home-based programs goes beyond mere dollars and cents. By placing the state in the position of family facilitator rather than government enforcer, the whole focus of government intervention in family life is transformed from intrusive to beneficent. In the minds of most people, this is the role government was created for in the first place--the role of public servant. A true sense of self-esteem and self-determination is restored to family members who become aware that services are available to help them before the inevitable problems grow beyond their control, actually keeping total state intervention at a minimum. This is the family integrity that the new Act seeks to preserve and that the Legislature now must encourage and facilitate.

For service providers, the Montana Family Policy Act should solve more problems than it creates. Although providers must now forego the inclination toward grant-driven motivations and turf preservation, the resultant coordination and collaborative provision of particular services should allow service providers to finally accomplish together what previously could not be done individually--namely, meeting the needs of families in the home atmosphere with state sanction and coordinated public and private resources.

As for families themselves, the Montana Family Policy Act should serve to restore confidence in family relationships and in the government itself, reducing state intervention in the family by providing appropriate, professional, meaningful services before crises arise. The long-term drain on state resources should be significantly reduced by this provision of short-term but timely assistance, from prenatal counseling to aid for the elderly. Education will be the

key as families begin to realize that there is a mechanism to provide them help.

Aside from obvious funding considerations that must be addressed in order to implement the home-based services aspects of the Act, a further concern, which may or may not arise as the Act is developed, is the possible need for greater privacy and confidentiality to be accorded affected families. As part of expanded home-based services, it is reasonable to assume that families must also be afforded a heightened level of privacy. If family integrity is to be affected as little as possible by these services, the bulk of preventive action should take place in the private atmosphere of the home environment and the effects of successful services should be felt in a positive manner only by family members, without the need to implicate community or institutional entities beyond those immediately involved. Another projected effect may be the need for in-home mediation services to deal with strained family relationships and to help families at risk of having their situations escalate to the next level of state intervention.

The innovative and progressive Montana Family Policy Act has the potential to provide Montanans with perhaps the last, best hope for preserving the family as an institution. The creativity, commitment, resources, coordination, and motivation required to fulfill this policy will be phenomenal and unprecedented. But it must be fulfilled. As the Act itself recognizes, support and preservation of the family is "the single most powerful influence for ensuring the healthy social development and mental and physical well-being of Montana's children", indeed of all Montanans. Just the fact that the Legislature has found it necessary to preserve in statute this generally accepted statement of family values shows that family integrity, formerly accepted as a given, is in danger of falling by the way and is in need of strengthening. Not only the integrity of the family, but the integrity of all institutions that depend on the family for existence--the state, the government, the nation, possibly the human race itself--rely upon the job being done and done well. The road ahead is clearly marked; the first step of the journey has been made.

ENDNOTES

1. The Enebling Act of 1889, section 17.

2. Interim Study on Institutions, Subcommittee on Finance and Claims, Montana Legislative Council, December 1974

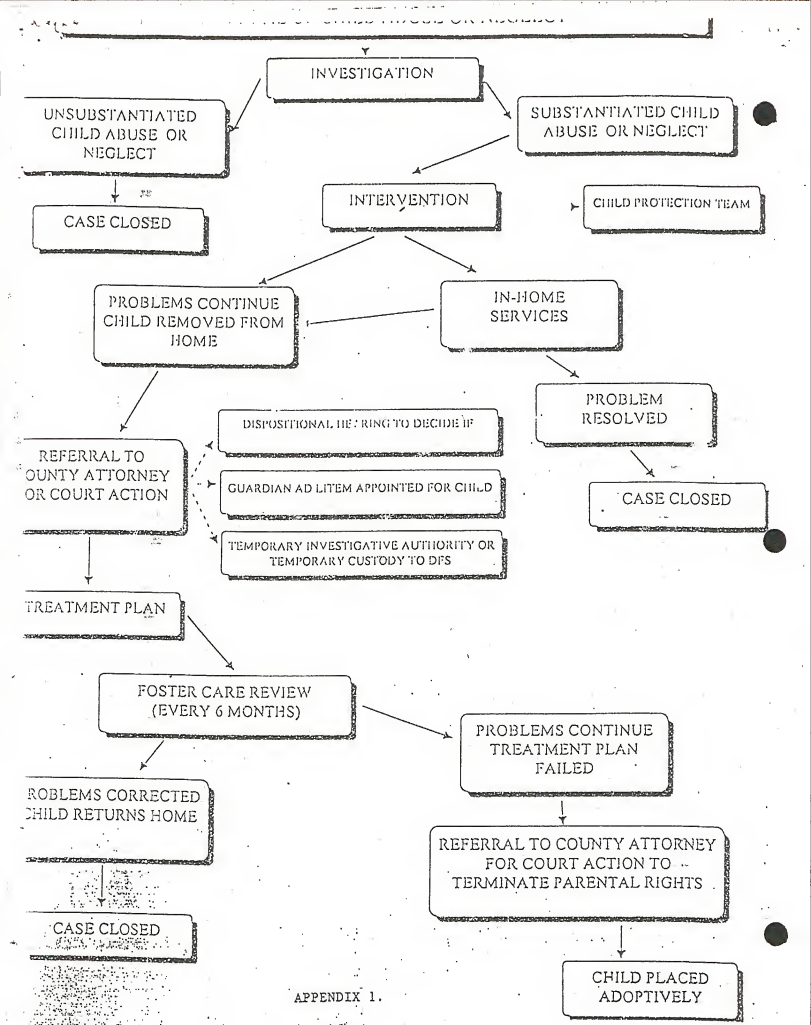
3. Montana Family Policy Act, Title 41, chapter 7, MCA

4. Department of Family Services Policy Manual: Children's Services, January 1992

5. Black's Law Dictionary, Fifth Edition, 1979

6. Washington Post National Weekly Edition, February 7-13, 1994, pp. 24, 25

7. Current Trends in Child Abuse Reporting and Fatalities: The Results of the 1992 Annual Fifty State Survey, McCurdy & Daro, National Center on Child Abuse Prevention Research, 1993


INVESTIGATION
UNSUBSTANTIATED CHILD ABUSE OR NEGLECT
SUBSTANTIATED CHILD ABUSE OR NEGLECT
CASE CLOSED
INTERVENTION
CHILD PROTECTION TEAM
PROBLEMS CONTINUE CHILD REMOVED FROM HOME
IN-HOME SERVICES
PROBLEM RESOLVED
DISPOSITIONAL HEARING TO DECIDE IF
REFERRAL TO OUNTY ATTORNEY OR COURT ACTION
GUARDIAN AD LITEM APPOINTED FOR CHILD
CASE CLOSED
TEMPORARY INVESTIGATIVE AUTHORITY OR TEMPORARY CUSTODY TO DFS
TREATMENT PLAN
FOSTER CARE REVIEW (EVERY 6 MONTHS)
PROBLEMS CONTINUE TREATMENT PLAN FAILED
ROBLEMS CORRECTED CHILD RETURNS HOME
REFERRAL TO COUNTY ATTORNEY FOR COURT ACTION TO TERMINATE PARENTAL RIGHTS
CASE CLOSED
CHILD PLACED ADOPTIVELY

APPENDIX 1.

Table 1

CHILD ABUSE AND NEGLECT REPORTS
ANNUAL PERCENTAGE CHANGE

State	85-86	86-87	87-88	88-89	89-90	90-91	91-92	
Alabama	-5	4	7	7	-1	14	0	C
Alaska	16	NA	-3	-5	0	14	12	R
Arizona	12	1	12	22	6	4	23	C
Arkansas	13	1	NA	0	1	1	-3	C
California	16	7	29	13	3	3	8	C
Colorado	-6	11	24	-4	12	-2	NA	R
Connecticut	2	9	NP	-1	-2	3	8	C
Delaware	-2	NA	0	-6	0	9	9	R
District of Columbia	21	6	0	20	-4	13	16	C
Florida	-2	0	6	19	NP	1	NA (+)	C
Georgia	17	26	-8	26	1	42	-10	R
Hawaii	10	-2	-18	-6	17	-1	NA (+)	R
Idaho	5	0	-1	1	11	2	3	R
Illinois	1	30	3	9	1	4	22	C
Indiana	3	-16	5	29	27	22	8E	C
Iowa	2	0	2	4	4	-2	NA	C
Kansas	-9	25	-12	-4	0	NP	3	C
Kentucky	13	8	5	2	7	9	9	C
Louisiana	22	-14	0	1	-1	10	2	C
Maine	-4	-14	NP	-8	-9	2	0E	C
Maryland	24	5	8	+5	2	8	3	R
Massachusetts	5	1	17	15	17	7	1	C
Michigan	15	-2	-3	2	4	-4	5	R
Minnesota	14	11	2	-5	-8	13	NA(+)	C
Mississippi	23	18	9	0	8	4	22	C
Missouri	5	1	-8	7	2	4	4	C
Montana	10	6	-1	7	8	7	29	C
Nebraska	-1	-3	-2	-2	2	9	0	C
Nevada	10	3	31	12	12	5	NA	R
New Hampshire	4	9	5	13	10	18	10	R
New Jersey	7	0	13	3	-7	-1	NA(-)	C

State	85-86	86-87	87-88	88-89	89-90	90-91	91-92	
New Mexico	-5	-2	9	49	17	21	48	C
New York	14	10	17	7	7	-1	2E	C
North Carolina	7	19	NP	31	15	35	8	C
North Dakota	NA	NA	NA	3	11	7	10	C
Ohio	4	1E	6E	3	6	9	0	R
Oklahoma	9	4	1	0	9	-15	13	R
Oregon	8	3	6	15	-5	-1	9	R
Pennsylvania	-1	-2	9	6	4	-2	NA(+)	C
Rhode Island	3	-2	11	16	24	1	4	C
South Carolina	12	-2	-1	3	NP	-3	16	C
South Dakota	12	6	3	2	2	-1	-6	C
Tennessee	3	NA	NA	6	1	-4	-10	C
Texas	8	-4	NP	12	13	10	17	C
Utah	9	-1	-1	12	2	13	6	R
Vermont	1	-9	7	9	-1	0	3	C
Virginia	-4	0	5	5	NP	13	7	C
Washington	7	-8	NP	2	0	5	DNR	R
West Virginia	5	1	3	1	-7	-2	DNR	
Wisconsin	11	2	6	11	12	16	NA	C
Wyoming	59	12	3	2	9	4	0	C
Average Percentage Change	+8%	+3%	+5%	+7.5%	+5.0%	+6.5	+7.8	

Estimated Number of Children Reported for Maltreatment	1985	1986	1987	1988	1989	1990	1991	1992
	1,919,000	2,086,000	2,157,000	2,265,000	2,435,000	2,557,000	2,723,000	2,936,000
Per 1,000 U.S. Children	30	33	34	35	38	40	42	45

E Estimate

DNR Did not respond to survey

NA Not Available

NA ( ) Indicates direction of expected change, i.e. (-) decrease, (+) increase.

NP The change could not be calculated due to a change in data collection procedures (i.e., switched from families to children)

C = change in # of children reported between 1991 and 1992

R = change in # of reports (e.g., families, incidents or reports) between 1991-1992